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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/233,443	01/20/1999	BERNHARD H. VAN LINGERICH	BVL-105	7428

7590 06/21/2006

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/233,443

Applicant(s)

VAN LINGERICH, BERNHARD H.

Examiner

Edward J. Webman

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,22,26,29,47-53,66,67,96-111,113 and 115 is/are pending in the application.
- 4a) Of the above claim(s) 53,55,98,100,104-107,113 and 115 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,22,26,29,47-52,66,67,96,97,103 and 108-111 is/are rejected.
- 7) ☒ Claim(s) 99,101 and 102 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/18/06, 4/7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 22, 26, 29, 47-52, 66, 67, 96, 97, 103, 108-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connick, Jr. et al in view of Lim et al.

Connick Jr. et al teach an extruded dough product comprising fungi (abstract). Durum wheat is specified (column 2 line 44). 60-100% wheat flower component other than fungus and water is disclosed (column 3 line 34-36). 9-13% water is taught (column 4 lines 11-12). Granules are specified (column 5 line 15). Adjuvants are disclosed (column 3 lines 26).

Lim et al teach extruded articles comprising cereal grain (abstract). 30-100% is specified (column 3 line 55). Durum wheat is disclosed (column 3 line 43). Granules are disclosed (column 7 line 61). Water insoluble lubricants are disclosed to increase the water resistance of the product (column 6 lines 12-26). Oils are disclosed (column 6 lines 19, 22).

It would have been obvious to one of ordinary skill to add an oil to the Connick Jr. et al composition to achieve the beneficial effect of providing water resistance in view of Lim et al. As to the claimed percent encapsulant, Connick et al teach as little as 60% cereal grain and 9 % water, as cited above. Therefore, the amount of fungus can be as high as 31%. As to the claimed process limitations, such are not considered patentable during prosecution of composition claims before the USPTO.

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Applicant argues that Connick et al teaches water for the encapsulated fungi to grow, therefore, addition of the oil of Lim et al to provide water resistance would be contrary to the operation of Connick et al. However, water-resistance is not water-proofing. Thus, it is argued that the fungus in the Connick et al granules will have access to environmental water. Connick et al further teach application to aquatic environments (column 2 line 28) and flotation in water (column 3 line 67-column 4 line 2). Lim et al teach water resistance to maintain structural integrity upon exposure to water (column 9 lines 20-38). Thus, in the Connick et al embodiment of a granule floatable in water, one of ordinary skill would be motivated to add the oil to the composition to maintain structural integrity in view of Lim et al.

Claims 21, 22, 26, 29, 47-52, 66, 67, 96, 97, 103, 108-111 are rejected. Claims 99, 101-102 are objected to as dependent upon a rejected claim.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Richter, can be reached on 571-272-0648. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EDWARD J. WEBMAN
PRIMARY EXAMINER
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